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Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 16 April 2002 from the Permanent Representative of Brazil to the United Nations addressed to Chairman of the Committee

I have the honour to transmit the annexed report of Brazil to the Security Council Committee established pursuant to resolution 1267 (1999), pursuant to the provisions of paragraph 6 of Security Council resolution 1390 (2002).

(*Signed*) Gelson **Fonseca**, Jr.
Ambassador
Permanent Representative

* Reissued for technical reasons.

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Annex to the letter dated 16 April 2002 from the Permanent Representative of Brazil to the United Nations addressed to Chairman of the Committee

Report on the implementation of Security Council resolution 1390 (2002) in Brazil

1. On 16 January 2002, the Security Council adopted resolution 1390 (2002), in which the Council decided that the funds and other financial assets or economic resources of Osama bin Laden, the Al-Qa`ida organization, the Taliban and their associates should be frozen; the entry of these individuals into or their transit through the territories of the Member States should be prevented; and the supplying of arms and military materiel to those organizations and the persons responsible for them should be prohibited.

2. Resolutions of the Security Council are incorporated into domestic law by means of decrees of the President published in the Federal Official Gazette. For certain prohibitions, such as diplomatic sanctions and restrictions on the transit of persons, the issuance of a decree is not necessary, inasmuch as the Government has the power to adopt appropriate measures on the basis of existing law.

3. Sanctions relating to Osama bin Laden, members of Al-Qa`ida and the Taliban regime have been introduced into the Brazilian legal system by the following regulatory acts:

(a) Decree No. 4150 of 6 March 2002 (Security Council resolution 1390 (2002) of 16 January 2002);

(b) Decree No. 4142 of 22 February 2002 (Security Council resolution 1388 (2002) of 15 January 2002);

(c) Decree No. 3755 of 19 February 2001 (Security Council resolution 1333 (2000) of 19 December 2000);

(d) Decree No. 3267 of 30 November 1999 (Security Council resolution 1267 (1999) of 15 October 1999).

4. Member States are required to present periodic reports on the implementation of the measures provided for in resolution 1390 (2002). The present document is structured in accordance with the guidelines provided on 7 March 2002 by the Committee charged with following up the matter.

5. According to Security Council resolution 1390 (2002), the Council:

> 2. Decides that all States shall take the following measures with respect to Osama bin Laden, members of the Al-Qa`ida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000), to be updated regularly by the Committee established pursuant to resolution 1267 (1999), hereinafter referred to as "the Committee":
>
> (a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction,

and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.

6. Concerning the financial aspects, in Brazil the content of sanctions regimes is the subject of a communication from the Central Bank to banking and other similar institutions required to implement the specified measures on the basis of article 9 of Act No. 4595 of 31 December 1964. That Act provides that it is the task of the Central Bank to comply and ensure compliance with measures related to the legislation in force. Section VIII of article 10 of that Act also grants the Central Bank the power to exercise oversight over financial institutions.

7. The regulations in force are regularly consolidated by the Central Bank in order to be reviewed and forwarded again to the financial institutions by means of "circulars" and "circular letters"; they are also accessible from the Central Bank's home page on the Internet. The system is flexible and makes it possible to provide information on restrictions added to or removed from the financial legislation in force, and in particular those pertaining to the approval of sanctions regimes by the Security Council.

8. The Department of Surveillance of Illegal Exchange and Financial Activities (DECIF) is competent to institute administrative proceedings, based on the identification of acts harmful to the market or evidence of illicit practices. Procedures for the application of fines are governed by, among other legal texts, National Monetary Council resolution No. 1065/85, amended by resolution No. 2228/96 of that Council. All the rules are found in the Manual of Rules and Instructions. Among other legal texts, Act No. 9613 of 3 March 1998 establishes which crimes constitute money-laundering and contains provisions on the prevention of the use of the financial system for the offences specified in the Law, while Act No. 9784/99 of 29 January 1999 and Complementary Act No. 105 of 10 January 2001 both provide for the possibility of lifting banking secrecy on financial transactions and offer additional means of carrying out investigations in case of other offences, including terrorism.

9. Without prejudice to the other penalties established by the legislation in force, article 44 of Act No. 4595 of 31 December 1964 provides that in the event of any violation of the rules and regulations of the Brazilian financial system (and, in consequence, manipulation of illegal resources), financial institutions, their directors, the members of their boards of directors, audit boards and the like and managers are subject to the following penalties: warning, pecuniary fine, suspension of functions, temporary or permanent disqualification for the direction or management of financial institutions and revocation of their operating licences.

10. DECIF must report to the competent public agencies (public prosecution service, Federal Revenue Secretariat and Financial Activities Control Council (COAF), among others), for the purposes of investigation, any irregularities and administrative offences of which it has knowledge. In the event that there exists well-founded evidence of the commission of crimes, COAF may also determine the institution of appropriate proceedings for remitting the case to the Federal Revenue Secretariat and the public prosecution service.

11. Funds belonging to terrorists may be frozen by distraint (Code of Criminal Procedure, title VII, chapter XI) or seizure (Code of Criminal Procedure, title VI,

chapter VI). In addition, the funds may be confiscated. However, article 91 of the Penal Code provides as follows: "Condemnation has the following effects: II. Forfeiture to the Union, without prejudice to the rights of injured parties or innocent third parties: (...) (b) of the proceeds of the crime or any asset or item of value related to gains obtained by the agent through the commission of the crime". The funds consisting of "any asset or item of value" of a terrorist organization are "gains" secured through the commission of the criminal act, terror, exercised against non-sympathizers, by intimidation (involuntary financing), and sympathizers (voluntary financing). Act No. 9613 of 3 March 1998 also permits the freezing (article 4) and confiscation (article 9) of funds derived from terrorism.

Findings

12. The Central Bank and COAF have not identified any financial resources belonging to persons appearing in the list published by the Security Council.

13. Paragraph 2 of resolution 1390 (2002) also provides that States must:

> (b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified.

14. In Brazil, the Federal Police Department of the Ministry of Justice, an organ under the direct administration of the executive authority, is responsible for the constitutional tasks of the maritime, airport and border police as well as the immigration police.

15. Functionally and organizationally, the General Coordination of Maritime, Airport and Border Police manages the Coordination of Immigration and Registration of Aliens (CIMCRE), Police Coordination of Expulsions (COPREC), Immigration Police Coordination (CPO), Coordination and Control of Passport Issuance (COCEP) and the Police Analysis and Investigation Service (SAIP).

16. The tasks are distributed in the following manner:

- CIMCRE manages the National System of Alien Registration, which contains the essential data on non-diplomatic foreign nationals resident in Brazil for an initial period of more than 90 days;
- COPREC manages the National System of Wanted and Banned Persons, which contains the essential data on Brazilians and foreign nationals who, by virtue of a legal decision, are sought by Brazilian or foreign authorities and persons, whether Brazilian or alien, whose entry into and exit from Brazil are prohibited;
- CPOI manages the National System of International Transit, which contains the necessary data on the entry and exit movements of foreign nationals into and out of the country;
- COCEP manages the National Passport System and SAIP is the central intelligence organ of the immigration police.

17. The lists published by the Security Council and the list of individuals whose entry into or exit from the country is restricted are transmitted to the Federal Police by the Ministry of Foreign Affairs. The names are included in the National System of Wanted and Banned Persons, together with a reference to the legal instrument authorizing the restriction of their rights.

18. In addition, with a view to complying with the Security Council sanctions, SAIP conducts investigations to obtain information on the transit of such individuals through Brazil and the conditions of their stay. Should an accused person be identified, the Federal Police must inform the governmental organs responsible for applying the sanction and the appropriate operational police unit, in order that the proper measures may be taken.

19. All the operational units of the Federal Police and all regular checkpoints for the international transit of persons seeking to enter or leave the country are equipped with appropriate means for consulting all the databases of the systems referred to above. At the time of their entry into or departure from Brazil, the names and other identifying particulars of international transit passengers are checked with the National System of Wanted and Banned Persons at those checkpoints and the measures provided for in the Security Council resolutions are implemented.

Findings

20. To date, no persons have been identified concerning whom any restriction on entry into or departure from Brazil or transit through national territory has been issued on the basis of the provisions of Security Council resolution 1390 (2002).

21. Paragraph 2 of resolution 1390 (2002) further provides that States must:

> (c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities.

22. Brazilian exports of materiel for military use are subject to the controls provided by the general guidelines relating to the National Policy on Exports of Materiel for Military Use (PNEMEM). The Ministry of Defence is responsible for preparing a list of products subject to control, based on PNEMEM. The list is incorporated into the Foreign Trade System, which is the mechanism for authorization and control of all Brazilian exports. It is run by the Department of Foreign Trade of the Ministry of Development, Industry and Trade and issues import and export authorizations. The granting of export authorizations for items included in the control list is subject to the obtaining of express authorization from the Ministry of Defence. Operations involving funds in excess of US$ 1 million require authorization by the Ministry of Defence itself.

23. Export authorization, in accordance with PNEMEM rules, is granted in two phases. The first authorization, which refers to the preliminary "negotiations", is granted by the Ministry of Foreign Affairs as authorization for the Brazilian company to initiate contacts with public and private foreign clients. The application

is evaluated on the basis of the domestic policy conditions and the international relations of the destination country of the export. This authorization is valid for a maximum period of two years.

24. In the second phase, which is specific to the export, the company is required, independently of the fact that it has been authorized to negotiate, to submit an official application for each export operation. The first requirement to be met is that the company should have been authorized to carry out the preliminary negotiations; the second is that guarantees deemed satisfactory by the Government of Brazil be provided concerning the final destination of the products. In the case of sale to private companies, the guarantee document is the import authorization issued by the responsible organ in the country of destination, confirming that the company is legally authorized to import the materiel in question. In the case of sale to foreign governmental agencies, the guarantee is the end user certificate in which the Government of the importing country warrants that it will use the materiel for a specific purpose within its territory and will not re-export it without due prior approval by the Government of Brazil.

Findings

25. There is no record of commercial transactions in arms or military materiel by Brazilian nationals or companies which might involve persons or organizations mentioned in the list related to resolution 1390 (2002).

26. Additional information on the application of sanctions and counter-terrorism activities adopted in Brazil can be found in Brazil's report to the Security Council Committee established pursuant to resolution 1373 (2001) on the implementation of that resolution (S/2001/1285).